S.B. CIVIL WRIT PETITION NO.5715/2007.

Kunj Bihari
Vs.
The State of Rajasthan & Ors.

Date of order : 4.12.2007

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Rajneesh Gupta for the petitioner.

******

Heard learned counsel for the petitioner.

The petitioner has challenged the order passed by the learned trial court dated 30.11.2005 whereby his application for striking out para nos.12 and 14 of the written statement filed under Order 6 Rule 16 CPC has been rejected and also the prayer that relief cannot be claimed by the defendant against the co-defendant by way of counterclaim has not been accepted.

Upon hearing the learned counsel for the petitioner, I find that the learned trial court noted that after the amendment in the written statement permitted by it on application of the defendant, the counterclaim survived only as against the plaintiff and not against the defendant no.5, and therefore, that prayer of the petitioner was liable to be rejected. With that

clarification made by the trial court, I do not think that the grievance of the plaintiff-petitioner on that aspect survives. So far as striking out of the pleadings in paras 12 and 14 are concerned, the learned trial court did not deem it appropriate to delete those paras on the request of the petitioner because it found that the aforesaid pleadings were incorporated in the written statement by the defendant consequent upon the plaintiff itself seeking amendment in the plaint based on subsequent development of regularization of his land by Gram Panchayat.

The order dated 30.11.2005 in my view, does not suffer from any infirmity so as to warrant interference by this Court. Subsequent order whereby the application of the defendant has been allowed and a limited amendment in the written statement has been permitted to be made whereas the defendant had filed the written statement after the amendment of the plaint mentioning in para 12 of the amended written statement that the regularization of the land by the Gram Panchayat has been procured by collusion and such

an order is liable to be set aside on its own and that the defendant was at liberty to ask the Gram Panchayat to withdarw the same. Now the amendment that has been permitted is that defendant would be at liberty to get the Gram Panchayat injuncted by order of the Court for withdrawing the patta. Earlier pleadings in my considered view, cannot be taken as admission and therefore, even after permission to substitute the word 'withdrawal' by 'injunction', no material difference is made becuase in any case what was in substance pleaded was that the regularization was procured by the plaintiff by collusion with the Gram Panchayat and that was according to the defendant was not legally sustainable.

I therefore, do not find any merit in this writ petition which is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

Skant/-